upon the grant of a long term franchise under the law of 1869. As that statute neither expressly nor by necessary implication purported to create any new rights in the streets but merely conferred on the consolidated company the pre-existing rights of its constituents, it would seem that, unless an extension of the franchise is inferable from the prolongation of the existence of the corporation, the rule of strict construction would lead to the conclusion that the plaintiff was without right in the city streets. In that event, it is submitted that the city's right to abate the tracks as a nuisance should be recognized and that the principal ground for the decision may well be questioned. Nevertheless, were the duration of the grant measurable by the life of the consolidated company, the force of the suggestion of the concurring opinion that the point in issue would be determinable only by a consideration of the status of a *de facto* corporation and that therefore the city had over-stepped its authority, must be conceded.

CRIMINAL ENFORCEMENT OF CONTRACTS FOR LABOR AS "INVOLUNTARY SERVITUDE."—Although at the time of its adoption the Thirteenth Amendment to the Federal Constitution was primarily directed against that type of slavery to which in this country the term was exclusively applied, it was early recognized by the Supreme Court that the expression "involuntary servitude" as used therein was sufficiently broad to include such kindred forms as the Chinese coolie system and Mexican peonage.[1] The latter indeed, whenever subsequently brought under judicial consideration, has accordingly been held to fall within the prohibition of the Amendment.[2] Still another type is illustrated in a series of statutes enacted in certain of the Southern States for the purpose of making productive irresponsible labor, all of which in one form or another imposed a criminal penalty upon the breach of a labor contract. Thus one Act penalized the breach alone;[3] a second was intended to prevent the laborer who had abandoned one master from making a contract for similar service with a different employer,[4] and still another declared it a crime for a laborer to break his contract without repaying such advances as he might have received.[5] Each of these enactments was in turn declared unconstitutional upon the ground that, viewed with reference to their practical results, they opened the door for the creation and maintenance of a system of servitude as truly involuntary as peonage itself, and equally within the scope of the Thirteenth Amendment and of the congressional legislation enacted in pursuance thereof.[6] These decisions may clearly be justified upon the ground that while the sanction of mere civil liability to compensate in damages for breach of the contract cannot be regarded as compulsion, yet to intrust to the master the powerful weapon of the criminal law would render the laborer's service in a

[1]Slaughter House Cases (1872) 16 Wall. 36, 68; *In re* Turner (1867) 1 Abb. (U. S.) 84.

[2]Peonage Cases (1903) 123 Fed. 671; Peonage Cases (1905) 136 Fed. 707; *In re* Peonage (1905) 138 Fed. 686.

[3]*Ex parte* Hollman (1908) 79 S. C. 9, overruling State *v.* Williams (1889) 32 S. C. 125.

[4]Peonage Cases (1903) 123 Fed. 671; Toney *v.* State (1904) 141 Ala. 120.

[5]State *v.* Murray (1906) 116 La. 655; *Ex parte* Drayton (1907) 153 Fed. 986; State *v.* Williams (1909) 150 N. C. 802.

[6]*Ex parte* Hollman *supra;* see also cases cited in notes 3, 4, and 5 *supra.*

real sense involuntary servitude.[7] In apparent conflict with these principles is the position taken by the Supreme Court in sustaining a statute which penalized the breach of a contract for service as a sailor, that the "involuntary servitude" referred to in the Amendment included only such service as was involuntary in its inception;[8] but this doctrine, except as applied to the special facts of such cases, has since been repudiated by the same tribunal.[9] The result of these adjudications therefore seems to be to prohibit all legislation which tends directly or indirectly to the creation or maintenance of any form or degree of servitude involuntary either in its inception or at any state of its continuance, whether in liquidation of a debt or in any circumstances other than on conviction of a crime.[10] The recognition by the courts of the power of the State to declare criminal a wanton disregard of life or property even though involving incidentally a breach of contract, does not create an exception to the doctrine thus stated.[11]

A situation calling for an application of the foregoing principles was recently presented to the Supreme Court of the United States in the case of *Bailey* v. *Alabama* (1911) 219 U. S. 219. A State statute having imposed a criminal penalty upon the fraudulent breach of a contract of service by an employee while still indebted to his employer for advances, an amendment which provided further that the mere fact of the breach under such circumstances should be *prima facie* evidence of the wrongful intent, was held unconstitutional as in contravention of the Thirteenth Amendment. The original statute was clearly valid as imposing a penalty upon the fraudulent violation of a contract obligation, since to create such a crime is clearly within the legislative power,[12] and of course the State may likewise lay down rules of evidence and even in criminal actions may declare that certain facts shall be *prima facie* proof of the main issue.[13] Since, however, such a declaration, when the given facts have no rational probative tendency, in effect pronounces them criminal, the power of the State in this regard must be co-extensive with its power to create the crime. Looking then to the practical operation of the amended statute,[14] especially when taken in connection the State rule of procedure excluding testimony as to one's uncommunicated motive or intent,[15] the result is apparent. By making certain unexplained and uncontroverted facts, which apparently have no necessary bearing upon the question of fraud, *prima facie* evidence of criminal intent, and thus in effect constituting them a crime, the legislature has penalized the mere breach of a contract of service by an employee before having discharged an

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[7]Clyatt *v.* U. S. (1904) 197 U. S. 207; *Ex parte* Hollman *supra.*

[8]Robertson *v.* Baldwin (1897) 165 U. S. 275.

[9]Clyatt *v.* U. S. *supra;* Peonage Cases *supra.*

[10]Clyatt *v.* U. S. *supra.*

[11]See Peonage Cases (1903) 123 Fed. 671.

[12]*Ex parte* Riley (1891) 94 Ala. 82; Dorsey *v.* Alabama (1895) 111 Ala. 40; see also Lamar *v.* State (1904) 120 Ga. 312.

[13]People *v.* Cannon (1893) 139 N. Y. 32; Comw. *v.* Rubin (1896) 165 Mass. 453; Meadowcroft *v.* People (1896) 163 Ill. 56; 2 Wigmore, Evidence § 1354.

[14]Henderson *v.* Mayor of New York (1875) 92 U. S. 259.

[15]See Bailey *v.* Alabama (1909) 161 Ala. 75.

obligation arising from the receipt of advances. It follows that the statute as amended is simply an indirect method of enforcing by a criminal penalty a form of involuntary servitude in liquidation of a debt, and in accordance with the foregoing principles it would seem to be clearly in contravention of the Thirteenth Amendment and the accompanying Federal legislation.

RESTRAINTS ON ALIENATION OF ESTATES IN FEE SIMPLE.—It is well established that an absolute restraint in any form on the alienation of an estate in fee simple is void.[1] A number of reasons have been assigned for this rule. In the first place, it has been said in explanation of its historical origin that inasmuch as the grantor since the enactment of the Statute *Quia Emptores* does not retain a possibility of reverter, he has no interest in controlling the future disposition of the property.[2] Furthermore, since the power to alienate is one of its necessary incidents, a restraint on the exercise of that right is repugnant to the nature of the estate created.[3] While this theory of repugnancy has had great weight with the courts and justifies the prohibition of absolute restraints, its logical application would require that all partial restraints be held void as well. The ultimate basis for the doctrine, however, is to be found in considerations of public policy, as it is against the best interests of society to prevent the unrestricted transfer of property,[4] and the justification of limited restraints must be sought, if at all, in the same considerations.

Although it has often been stated that a partial restraint on alienation may be good, no principle seems to have been developed to determine definitely what restraints are valid, but it has been said that the proper test should be whether the whole power of alienation is taken away substantially.[5] While a restraint may assume either the form of a restriction depriving the grantee of the power to pass title, of a condition giving the grantor or testator and his heirs a right of entry for its breach, or of a conditional limitation defeating the estate and vesting it in a third party, it is generally held in spite of a number of intimations to the contrary,[6] that the same rule should govern in each instance, since otherwise a landowner might be enabled to accomplish indirectly what he cannot do directly.[7]

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[1]Litt. § 360; Co. Litt. § 223a; Sheppard's Touchstone 129; Murray *v.* Green (1883) 64 Cal. 363; Freeman *v.* Phillips (1901) 113 Ga. 589; De Peyster *v.* Michael (1852) 6 N. Y. 467; Overbagh *v.* Patrie (N. Y. 1850) 8 Barb. 28; Pardue *v.* Givens (N. C. 1854) 1 Jones Eq. 306; Munroe *v.* Hall (1887) 97 N. C. 206.

[2]Co. Litt. § 223a; De Peyster *v.* Michael *supra;* Overbagh *v.* Patrie *supra;* see Blackburn *v.* McCallum (Can. 1903) 33 S. C. R. 65.

[3]Litt. § 360; Bacon's Abridgment, tit. "Conditions" L; De Peyster *v.* Michael *supra;* see Mandlebaum *v.* McDonnell (1874) 29 Mich. 78; Murray *v.* Green *supra;* Jones *v.* Port Huron Engine Co. (1898) 171 Ill. 502.

[4]Co. Litt. § 223a; De Peyster *v.* Michael *supra;* Overbagh *v.* Patrie *supra.* See Wool *v.* Fleetwood (1904) 136 N. C. 460; Walker *v.* Vincent (1852) 19 Pa. St. 369.

[5]*In re* Macleay (1875) L. R. 20 Eq. 186.

[6]See Mandlebaum *v.* McDonnell *supra;* Anderson *v.* Cary (1881) 36 Oh. St. 506; Wool *v.* Fleetwood *supra.*

[7]Gray, Restraints on Alienations § 12; *In re* Dugdale (1888) L. R. 38 Ch. Div. 176. In Tennessee, however, it seems that a conditional limitation may be valid where a restriction would not be. Fowlkes *v.* Wagoner (Tenn. 1898) 46 S. W. 586; Overton *v.* Lea (1902) 108 Tenn. 505, 554.